3848

BILL NO. S-77-11-19

SPECIAL ORDINANCE NO. S-254-77

AN ORDINANCE approving a contract with the City of Fort Wayne and Maysville Regional Sanitary Sewer District.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the contract dated October 19, 1977, between the City of Fort Wayne, by and through its Mayor and the Board of Public Works and the Maysville Regional Sanitary Sewer District, for:

> The rendering of sewage treatment service through Maysville Regional Sanitary Sewer District's connection with the Fort Wayne sewer,

all according to the rules and regulations approved by the EPA and Fort Wayne City Council, all as more particularly set forth in said contract which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Councilman

APPROVED AS TO FORM
AND LEGALITY

CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by Hinga, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19__, at _____ o'clock ____ M.,E.S.T.

DATE: 11-8-77

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by Burns, seconded by V. Schmidt, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	9				
BURNS	✓				
HINGA	✓				
HUNTER	✓				
MOSES	✓				
NUCKOLS	✓				
SCHMIDT, D.	✓				
SCHMIDT, V.	✓				
STIER	✓				
TALARICO	✓				

DATE: 11-22-77

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (~~GENERAL~~) (ANNEXATION) (SPECIAL) (~~APPROPRIATION~~) ORDINANCE (RESOLUTION) No. S-254-77 on the 22nd day of November, 1977.

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

John Nuckols
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 23rd day of November, 1977, at the hour of 11:00 o'clock A M.,E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 25th day of November, 1977, at the hour of 10:00 o'clock A M.,E.S.T.

Robert E. Armstrong
MAYOR

Bill No. S-77-11-19

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance approving a contract with the City of Fort Wayne and Maysville Regional Sanitary Sewer District

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance DO PASS.

PAUL M. BURNS - CHAIRMAN

FREDRICK R. HUNTER - VICE CHAIRMAN

VIVIAN G. SCHMIDT

WINFIELD C. MOSES, JR.

JAMES S. STIER

DATE 11-22-77 CONCURRED IN

CHARLES W. WESTERMAN, CITY CLERK

65-106-19 H.I 10/19/77

WATER POLLUTION CONTROL TREATMENT
AGREEMENT BETWEEN
THE CITY OF FORT WAYNE, INDIANA
AND
MAYSVILLE REGIONAL SANITARY SEWER DISTRICT

THIS AGREEMENT (hereinafter referred to as "Agreement") entered into this 19 day of October, 1977, by and between the CITY OF FORT WAYNE, INDIANA, a municipal corporation of the State of Indiana (hereinafter referred to as "Contractor"), and MAYSVILLE REGIONAL SANITARY SEWER DISTRICT, a "Sewer District" established under the laws of the State of Indiana (hereinafter referred to as "Contractee"),

WITNESSETH THAT:

WHEREAS, Contractor has a sewage treatment plant that is presently receiving Federal and State grant assistance in the expansion of the capacity thereof, which, when expanded, will have a capacity available for the treatment of sewage from Contractee; and

WHEREAS, Contractee does not have a sewage treatment plant with the capacity and/or capability to adequately treat the sewage from its service area; and

NOW THEREFORE, Contractor agrees to provide Contractee with sewage treatment service through Contractee's connection with the Fort Wayne sewer system for sewage treatment pursuant to the following terms and conditions:

1. Effective Date. It is understood and agreed between the parties that this contract shall become effective after its execution and approval by the Board of Public Works and Common Council of the City of Fort Wayne and by the Board of Trustees of Contractee and any courts having jurisdiction over acts of said Board. By execution of this Agreement, Contractor represents that

prior approval of EPA, as hereinbefore referred to, has been granted to Contractor for rates charged herein. It is also understood and agreed that this Agreement is also subject to the approval of the Indiana Stream Pollution Control Board, the Indiana Board of Health, and any other regulatory agency as may be legally required.

2. Term of Agreement. This Agreement shall continue in full force and effect for twenty (20) consecutive years from the first date of connection or rendering of service hereunder.

This Agreement shall continue in full force and effect for an indeterminate number of five (5) year terms after the initial term unless one of the parties shall notify the other in writing at least three (3) years prior to the expiration of the original term or any additional five (5) year terms of its desire not to continue the Agreement. In the event that there has been a change in physical conditions or rates applicable within the three (3) year period prior to the expiration of the original term or any additional term, then the terms and conditions of any renewal hereunder shall be re-negotiated in order to reflect the effect of such changes and the terms and conditions of this Agreement.

3. Interconnection. Contractee shall connect to the sanitary sewer lines of the Leo-Cedarville RSD at a point specified as follows:

The purpose of the tap-in shall be to transport Contractee's sewage through the Leo-Cedarville RSD lines to the Fort Wayne sewer system for treatment.

If a new tap-in is agreed to hereunder by the parties, Contractee will prepare, provide and construct, at its expense, the following:

A. Engineering plans and specifications for the gravity sewer line, pumping stations, measuring devices and appurtenances to connect its present system with the present Fort Wayne system at the metering and tap-in points, with copies of such plans and specifications to be given to the City of Fort Wayne at least two (2) weeks before the same are submitted for approval to the Indiana Stream Pollution Control Board and the Indiana Board of Health in order to allow Fort Wayne to review and make written comment with respect to said submissions.

B. The easements relating to any land over which the transporting gravity sewer line is to be constructed are to be obtained and recorded.

It is expressly understood and agreed between the parties that all costs of the tap-in, including the planning, inspection and construction of any transporting gravity sewer line to said tap-in point shall be borne exclusively by Contractee.

4. Acceptance and Treatment of Sewage.

A. Responsibility for Delivery and Transportation. Contractee shall be solely responsible for delivery of the sewage material to the metering point and/or tap-in point in a form suitable for passage through the Fort Wayne sewer line system. The metering point and tap-in point are located as shown on Exhibit "A". Said sewage material shall be delivered from the Contractee's sewage line system to the tap-in and metering point by a gravity sewer line. Contractor shall be solely responsible for transporting the sewage material from the tap-in and metering point and delivering same to its sewage treatment facilities.

B. Treatment. Contractor shall be solely responsible for the proper treatment and transportation of the sewage materials received from Contractee in accordance with the requirements and standards of the Indiana Stream Pollution Control Board, Indiana State Board of Health and the Environmental Protection Agency.

C. Sewage Materials Acceptable. Contractee shall comply in every regard where applicable with Chapter 24 of the Code of the City of Fort Wayne, Indiana of 1977, and as amended from time to time thereafter and specifically, but not limited to, Article III, Prohibited Industrial Discharges, and the Rules and Regulations of the U. S. Environmental Protection Agency. Contractor shall be under no obligation whatever to accept any type of waste or toxic materials, if said waste or material is a prohibited discharge under rules of any regulatory agency having jurisdiction in the circumstances. It is recognized by Contractee that the Code of the City of Fort Wayne, Indiana of 1977, Chapter 24, may be amended from time to time so as to change the types of wastes which must be accepted by Contractor and the parties specifically agree to such amendments.

Upon discovery that unacceptable sewage materials as defined by Chapter 24 of the Code of the City of Fort Wayne, Indiana of 1977, as amended from time to time, or waste or materials deemed unacceptable pursuant to rules and regulations duly promulgated by any regulatory agency having jurisdiction are being transmitted by the Contractee's connection to Fort Wayne's system:

(1) Contractee shall immediately cease delivery of such materials and/or waste upon verbal notification and confirmation thereof in writing, within twenty-four (24) hours.

(2) If Contractee shall fail to cease said transmission immediately, Contractor may, at its option, without liability and at Contractee's cost:

(a) Cut off the user, if such is ascertainable, which is found to be delivering unacceptable sewage to the Contractee's sewer system;

(b) Cease servicing the entire Contractee system and cease accepting all sewage transmission from Contractee until the cause for such action is remedied to the satisfaction of Contractor, the U.S. Environmental Protection Agency and the Stream Pollution Control Board of Indiana;

(c) Contractee shall bear all liabilities and costs which Contractor may incur or be liable for, in its sole discretion, caused either by the further transmission of said unacceptable sewage by Contractor or exercise of its rights hereunder; or both.

D. Volume. In the event of flow which average more than 0.200 mgd (hereafter "base mgd") for any 90 day period (hereafter "qualifying period") then an additional treatment plant capital charge (hereafter "surcharge") will be paid by Contractee, subject to the following provisions:

(1) The surcharge shall be equal to the capital charge (as approved by EPA) for Contractor's treatment rate for all users multiplied by the ratio of the excess mgd during the qualifying period to the base mgd expressed in and collected for per 100 cu. ft. thereof.

(2) In no event shall the Contractor be required to accept sewage from Maysville RSD in volumes of flow which average more than double base mgd for any subsequent qualifying period.

E. Cost of Treatment.

(1) Rate. Contractee agrees to pay to Contractor for the conveyance, treatment and billing of sewage flow received at the metering point both in respect of the volume and composition of such flow as set out in the contract rate attached hereto as Exhibit "B". As provided in said rate schedule, as approved by EPA and all legislative and regulatory bodies having jurisdiction thereof, Contractee agrees to pay, when applicable, any zone surcharge, excess strength surcharge, or flat charge so provided for.

The rates set forth in Exhibit B, it is understood by the parties, will be subject to annual review and adjustment whenever the rates charged all other contract users are reviewed and adjusted.

(2) Measure of Volume. Contractee shall install proper and adequate metering and sampling devices for the purpose of measuring the volume of sewage materials delivered to the metering point on Exhibit "A" for treatment, and to provide sampling and monitoring capability. Said metering and sampling devices

shall be constructed in a manner and in a place acceptable to Contractor. The design of meters and metering points shall be approved by Contractor and shall provide for the following metering devices:

Each such device shall be subject to the inspection, testing and approval of each party at all times. For these purposes, and for the purposes of reading and recording data from said meters, each party shall at all times have complete and free access to said metering points and devices.

The cost of planning, designing, building and installing metering point or points and devices including acquisition of real estate shall be borne exclusively by Contractee. In addition, Contractee shall assume complete responsibility, including costs, for the installation, maintenance and repair of said metering devices, and will further defray any costs incurred by reason of testing of the metering devices as requests may be made by Contractor from time to time, provided such requests are reasonable as to frequency and nature of tests required.

Sampling devices which are capable of providing a twenty-four (24) hour composite taken hourly shall be installed and maintained by Contractee. The location of such sampling devices and the specifications thereof shall be approved by the Contractor.

Composite twenty-four (24) hour sampling will be conducted at the minimum of weekly intervals. Parameters to be tested shall include PH, suspended solids, COD, BOD, phosphorus, metal ions, total nitrogen and other testing as required to satisfy Indiana Stream Pollution Control Board and the U.S. Environmental Protection Agency regulations.

Material samples as received from the sampling device shall be available to both contracting parties. In the event the Contractor provides testing for such samples, the reasonable cost of providing such services shall be paid by Contractee.

(3) Payment. The volume of sewage accepted by Contractor into its sewage system for processing from Contractee as measured by metering devices previously specified shall be determined on or about the first Monday of each calendar month and shall be billed to Contractee within thirty (30) days thereafter for all charges applicable under rate schedules then in effect for the previous thirty (30) day metered period. Such charges shall commence on the first day sewage is accepted by Contractor into its sewage system from Contractee for processing. Payment shall be made by Contractee promptly, without the right of set-off, within twenty (20) days after being billed by contractor.

(4) Rate Covenants of Contractee. Contractee shall institute, maintain and enforce a system of user charges in accordance with Sec. 204 B (1), Public Law 92-500 as amended and supplemented and guidelines and regulations promulgated by EPA from time to time thereunder. Contractee shall provide evidence of continuing compliance therewith as required by Contractor and pursuant to foregoing legislation and rules.

Contractee shall adopt and enforce ordinances providing for rates, rules and regulations and use of its sewage system which are in conformity with reasonable requirements adopted and enforced by the Contractor for the purpose of permitting the Contractor, on a continuing basis, to be awarded grants from the State of Indiana and from EPA and other governmental agencies which may now or in the future offer grants incident to the treatment and collection of sewage.

(5) Industrial Cost Recovery System. The Contractee shall institute, maintain and enforce an Industrial Cost Recovery System for industrial users (as such users are defined in 40 CFR 35.905-8) as required under the rules and regulations of EPA with particular reference to paragraphs 35.935-13 and 35.928-1 and 35.928-2 of the rules and regulations of EPA pursuant to Public Law 92-500, and all acts and amendments subsequent thereto.

Contractee shall collect in trust from industrial users of its system industrial cost recovery funds as may be required by the prevailing federal statutes and EPA regulations referred to above as may be further directed and mandated by the Contractor, for and on behalf of Contractor, in respect of its requirements imposed by the EPA so that said contractor may, on a continuing basis, meet all of the requirements of its Industrial Cost Recovery System. All funds collected from industrial users served by the sewage system of the Contractee in respect to state and federal grants of which the Contractor is grantee shall be held in trust as collected and shall be remitted to Contractor in accordance with payment provisions set forth elsewhere in this Agreement. In the event, pursuant to written notice thereof, Contractee fails to comply with enforcement or collection requirements of the Industrial Cost Recovery and User Charge or any other provision of PL 92-500 which failure places in jeopardy or in any other manner makes Contractor deficient and/or delinquent as a grantee of the state and federal governments, then Contractor can levy charges and collect revenues from users of Contractee's system to satisfy any such deficiency.

F. Industrial Customers' Reports.

In remitting Industrial Cost Recovery funds to Contractor as referred to above, information will be submitted by Contractee on a monthly basis or such longer period as agreed to by the parties in writing, including the same of the industry, industrial flow,

analysis of waste and such other information as may be deemed necessary and useful to meet the requirements of EPA and the Contractor.

G. Billing.

Contractor will be responsible for reading the metering devices at metering and tap-in points and billing the Contractee therefor in accordance with rate schedules then in effect.

5. Litigation. The cost of litigation now, in the past or future, with customers within Contractee's customer service area required to be initiated by Contractor shall be borne solely by Contractee. Contractee agrees and undertakes to hold harmless and indemnify Contractor from any damages arising from Contractee's operation of its sewage system.

6. Compliance with Rules, Regulations, Standards and Laws. The parties of this Agreement shall comply with all state and federal regulations, standards and laws regarding the collection and treatment of sewage and the operation of their respective systems. In the event studies and/or rehabilitations are necessary or required as a condition of Contractor receiving a sewage grant, Contractee shall cooperate with Contractor's reasonable requests to satisfy such requirements.

7. Right of First Refusal and Service Area. During the term of this Agreement, Contractee shall not expand its sewer system, nor annex or otherwise acquire any service area outside of Contractee's service area as identified on Exhibit "C" attached hereto.

8. More Than One Tap-In Point. Should it become necessary or convenient for the parties hereto to tap into the Contractor's sewer system at more than one point in order to permit adequate service, then the location of such tap-in point shall be negotiated between the parties. All of the terms and conditions of this Agreement shall pertain to extension of this Agreement.

9. Remedies in the Event of Default. In the event that Contractee shall default hereunder and said default is not cured within thirty (30) days of written notice of same, or, in the event said default is not of a type which can be cured within thirty (30) days, or Contractee is not proceeding with due diligence to cure said default within thirty (30) days of written notice of same, or if Contractee shall fail to make any payment hereunder within thirty (30) days after said payment is due to Fort Wayne (no notice being necessary in the event of non-payment), then Fort Wayne may apply to any court for the appointment of a receiver to administer all of Contractee's sewer works in the place of and stead of Contractee and to fix, charge and collect rates for such service. Collections from such an arrangement shall be paid out as follows:

> First, to payment of any delinquent sewage charges to the City of Fort Wayne;
>
> Second, to payment of expenses of operation, repair and maintenance of the Contractee's system;
>
> Third, to payment of any revenue bond obligations, or matured long-term debt;

Contractee now consents and agrees to the appointment of such a receiver in the event of default and specifically acknowledged receipt of sufficient consideration for such consent and agreement, and now waives any future recourse to said appointment.

10. Notices. Any notices required or desired to be given under this Agreement may be served personally or by mail. Any notice given by mail shall be deemed to have been served upon certified mailing, return receipt requested, postage prepaid, addressed to the party to be served at the last address filed by such party with the other party. At the date of the execution of this Agreement, Fort Wayne's address is City-County Building,

Attention of the Mayor, and Contractee's official address is:
C/O George H. Stieglitz, Jr., P.O. Box 179, Grabill, Indiana 46741.

11. Benefit. All of the provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of this Agreement.

CITY OF FORT WAYNE, INDIANA

By: Robert E. Armstrong
Robert E. Armstrong
Its Mayor

ATTEST:

Charles W. Westerman
Its Clerk

BOARD OF PUBLIC WORKS

By: Henry Wehrenberg
Henry Wehrenberg

By: Ethel H. LaMar
Ethel H. LaMar

By: Max G. Scott
Max G. Scott

MAYSVILLE REGIONAL SANITARY SEWER DISTRICT

Homer C. McMaken
Homer C. McMaken

Roy S. Fogle
Roy S. Fogle

George H. Stieglitz, Jr.
George H. Stieglitz, Jr.

ATTEST:

Ursula Miller

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, personally appeared the above named Robert E. Armstrong, Mayor of the City of Fort Wayne, Charles W. Westerman, Clerk of the City of Fort Wayne, Henry Wehrenberg, Ethel H. LaMar, and Max G. Scott, Members of the Board of Public Works of the City of Fort Wayne, who acknowledged that they did sign the foregoing Agreement and that the same is their free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, this 19 day of October, 1977.

Anne J. Fox
Notary Public

My Commission Expires:
3/6/80

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public, in and for said County and State, personally appeared the above named Homer C. McMaken, Roy Fogle and George H. Stieglitz, Jr., Trustees of the Maysville Regional Sanitary Sewer District, and that they did sign the foregoing Agreement and that the same is their free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal this 17 day of October, 1977.

Robert E. Connolly
ROBERT E. CONNOLLY
Notary Public

My Commission Expires:
May 31, 1981

City Clerk Memorandum

CHARLES W. WESTERMAN, Clerk

To Mayor Robert E. Armstrong **Date** 11-16-77

From Charles W. Westerman - City Clerk

Subject Appearance before Common Council - 11-22-77

COPIES TO:

BILL NO. S-77-11-19

AN ORDINANCE approving a contract with the City of Fort Wayne and Maysville Regional Sanitary Sewer District

BILL NO. S-77-11-20

AN ORDINANCE approving a contract with the City of Fort Wayne and Leo Cedarville Regional Sewer District

Pursuant to the request of the Standing Committee Chairman of City Utilities of the Common Council, the presence of Henry P. Wehrenberg - Chairman of the Board of Public Works, is respectfully requested on November 22, 1977, at 7:00 P.M., Room 128, Common Council Conference Room.

Council is interested in more information regarding the sewage treatment service through Maysville Regional Sanitary Sewer District and the sewage treatment service through Leo Cedarville Regional Sewer District.

Your cooperation will be greatly appreciated.

Carma J. Rencke

11-16-77

5040

ITLE OF ORDINANCE SPECIAL ORDINANCE – WATER POLLUTION CONTROL TREATMENT BETWEEN THE CITY OF FORT WAYNE, INDIANA AND MAYSVILLE REGIONAL SANITARY SEWER DISTRICT

EPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS 2-77-11-19

NOPSIS OF ORDINANCE WATER POLLUTION CONTROL TREATMENT AGREEMENT BETWEEN THE CITY OF FORT WAYNE, INDIANA AND MAYSVILLE REGIONAL SANITARY SEWER DISTRICT.

FFECT OF PASSAGE TRANSPORT SEWAGE TO THE FORT WAYNE SEWER SYSTEM FOR TREATMENT

FFECT OF NON-PASSAGE INABILITY TO TRANSPORT SEWAGE TO THE FT. WAYNE SEWER SYSTEM FOR TREATMENT

ONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) RATE AS APPROVED BY EPA AND CITY COUNCIL

SSIGNED TO COMMITTEE